

7.0.0 MEDICAL SUPPORT LIABILITY

7.1.0 Assignment

Medical Support Liability (MSL) means all MA clients must sign over to the State of Wisconsin all of their rights to payments from:

1. Court ordered medical support, **or**
2. Other third party payors of their medical expenses.

This is an eligibility requirement.

Signing the application form and filling out the Notice of Assignment (DES 2477) is how a client complies with this requirement. The assignment of medical support includes all unpaid support and all ongoing support obligations for as long as MA is received. The Child Support Agency (CSA) will obtain the assignment when there is a court order in a state which does not recognize the automatic assignment.

The Economic Support Agency (ESA) must give a DES 2477 to each client. Do this no later than at the time of the interview. Give the client a copy of the notice. File the original in the case record.

7.2.0 Recovery of Birth Costs

Fathers who were not part of the final MA fiscal test group, which includes the mother and fetus, at the time of certification can be required to pay their children's birth costs. Inform pregnant MA applicants that the child's father could be held responsible for repayment of birth costs.

7.3.0 Referral to CSA

Refer anyone, including any child, for whom MA is requested or received to the county CSA as follows:

1. Pregnant woman. Advise all unmarried pregnant women that they are not required to cooperate with the CSA during the pregnancy and for two months after the end of pregnancy.
2. Child receiving SSI, **if** the caretaker requests child support services for the child. Do not sanction this caretaker if s/he does not cooperate with the CSA.
3. Mother and father not married to one another and paternity has not been established by court action. This includes a non-marital parent even when:

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7.3.0 Referral to CSA (cont.)

- a. A Statement of Paternity (IMM, Ch. I, Appendix 29g) has been completed,
 - b. Both parents are in the home.
4. One or both of the natural or adoptive parents is not living in the household. Do not refer to the CSA when the only reason a parent or stepparent is not in the home is because s/he is in the military.
 5. Natural parents in the home, but:
 - a. Child was born prior to their marriage, **and**
 - b. Paternity not established by court action, or the birth not legitimized after their marriage.

CARES automatically sends a referral to the CSA when a case is confirmed. Fill out the absent parent screens completely and accurately so the CSA gets a good referral. Only complete the Referral to Child Support form (DES 3080) when CARES is not sending the referral. The CSA works with the mother to establish paternity for the child, if paternity has not been established, and obtains the medical support order.

7.4.0 MSL Cooperation

Unless the person is exempt or there is good cause for refusing to cooperate, each client must, as a condition of eligibility, cooperate in:

1. Establishing the paternity of any child born out of wedlock for whom MA is requested or received, **and**
2. Obtaining medical support for the client and for any child for whom MA is requested or received.

Cooperation includes any relevant and necessary action to achieve the above. As a part of cooperation, the client may be required to:

1. Provide verbal or written information known to, possessed by, or reasonably obtainable by the client.
2. Appear as a witness at judicial or other hearings or proceedings.

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- 7.4.0 MSL Cooperation (cont.)**
3. Provide information, or attest to the lack of information, under penalty of perjury.
 4. Pay to the clerk of court or the CSA any court ordered medical support payments received directly from the absent parent after support has been assigned.
 5. Attend office appointments as well as hearings and scheduled genetic tests.

7.4.1 Polygraph

Do not require participation in a polygraph examination.

A client may voluntarily participate in a polygraph examination. The results, however, may only be used to challenge or uphold other evidence. They may not be used as conclusive evidence against the client.

7.4.2 Failure to Cooperate

Sanction clients, applying for either Family MA or EBD MA, who refuse to cooperate, unless there is good cause (7.5.0). Do not sanction the following if s/he does not meet the MSL cooperation requirement:

- Pregnant women.
- Minors.
- Dependent 18-year-olds (4.6.0).

The CSA determines if there is non-cooperation. The ESA determines if good cause exists. If there is a dispute, the CSA makes the final determination of cooperation. S/he remains ineligible until s/he cooperates, establishes good cause, or cooperation is no longer required. This applies also to persons in a MA extension (9.3.0).

Example. Mary, a disabled parent, is applying for MA for her and her son, Michael. She refuses to cooperate in obtaining medical support for Michael. Mary meets all other non-financial and financial criteria for Family MA and EBD MA.

Mary is not eligible for EBD MA or Family MA, because she will not cooperate in obtaining medical support for Michael. Even though Mary has not cooperated in obtaining medical support for Michael, he remains eligible for MA.

For a pregnant woman, failure to cooperate cannot be

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7.5.0 Claiming Good Cause

determined prior to the end of the month in which the 60th day after the termination of pregnancy occurs.

Any parent or other caretaker relative who applies for or receives MA and who refuses to cooperate in establishing paternity and obtaining medical support may claim good cause. S/he must:

1. Specify the circumstance that is the basis for good cause, **and**
2. Corroborate the circumstance according to the evidence requirements in 7.5.5.

7.5.1 Notice

The ESA or Social Service agency must issue a Good Cause Notice (DES 2018) to all clients whenever a child is added to the MA card. The notice describes the right to refuse to cooperate for good cause in establishing paternity and securing medical support.

The ES worker and the client must sign and date the notice. File the original in the case record and give the client a copy. The CSA refers anyone who wants to claim good cause back to you.

7.5.2 Claim

Give a Good Cause Claim form (DES 2019) to any MA client who requests one. It describes the circumstances that support a claim and how to document a claim.

The client must sign and date the claim in the presence of an ES worker or a notary public. The client's signature initiates the claim.

File the original in the case record, give the client a copy, and attach a copy to the referral document when a claim is made at application.

Send the CSA a copy of all other claims within two days after a claim is signed. When you inform the CSA of a claim, they will immediately suspend all activities to establish paternity or secure medical support until notified of your final determination.

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7.5.3 Circumstances

The ESA or Social Service agency must determine whether or not cooperation is against the best interests of the child. They waive cooperation only if:

1. The client's cooperation is reasonably anticipated to result in physical or emotional harm to the:
 - a. Child. This means that the child is so emotionally impaired, that his or her normal functioning is substantially affected, **or**
 - b. Client. This means the impairment is of such a nature or degree that it reduces that person's capacity to adequately care for the child, **or**
2. At least one of the following circumstances exists and it is reasonably anticipated that proceeding to establish paternity or secure support or both would be detrimental to the child:
 - a. The child was conceived as a result of incest or sexual assault, **or**
 - b. A petition for the child's adoption has been filed with a court, **or**
 - c. The parent is being assisted by a public or private social agency in deciding whether or not to terminate parental rights and this has not gone on for more than three months.

7.5.4 Determination

The ESA or Social Services staff must determine whether or not there is good cause. This should be done within 45 days from the date a claim is signed. You may extend this if it is documented in the case record that additional time is necessary because:

1. The CSA cannot obtain the information needed to verify the claim within the 45 days, **or**
2. The client does not submit corroborative evidence within 20 days.

File the good cause determination and all evidence submitted in the case record. Include a statement on how the determination was reached.

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7.5.4 Determination (cont.)

If there is no evidence or verifiable information available that suggests otherwise, you must conclude that an alleged refusal to cooperate was, in fact, a case of cooperation to the fullest extent possible.

If the client is cooperating in furnishing evidence and information, do not deny, delay, or discontinue MA pending the determination.

If a Fair Hearing is requested on a good cause determination, continue any MA certification until the decision is given.

Do not use the 45-day period for determining good cause to extend an eligibility determination. The 30-day limit on processing an application is still a requirement.

The ESA must notify the applicant in writing of the final determination and of the right to a Fair Hearing. Send the CSA a copy. The CSA may also participate in any Fair Hearing.

7.5.5 Evidence

An initial good cause claim may be based only on evidence in existence at the time of the claim. There is no limit to the age of the evidence. Once a final determination is made, including any Fair Hearing decision, any subsequent claim must be based on new evidence.

The following may be used as evidence:

1. Birth certificates or medical or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.
2. Court documents or other records which indicate that a petition for the adoption of the child has been filed with a court.
3. Court, medical, criminal, child protective services, social services, psychological school, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the client or the child.
4. Medical records which give the emotional health history and present emotional health status of the client or the

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7.5.5 Evidence (cont.)

child.

5. A written statement from a mental health professional indicating a diagnosis of or prognosis on the emotional health of the client or the child.
6. A written statement from a public or private social agency that the agency is assisting the parent to decide whether or not to terminate parental rights.
7. A sworn statement from someone other than the client with knowledge of the circumstance on which the claim is based.
8. Any other supporting or corroborative evidence.

When a claim is based on emotional harm to the child or the client, the ESA must consider the:

1. Person's present emotional state, **and**
2. Person's emotional health history, **and**
3. Intensity and probable duration of the emotional impairment, **and**
4. Degree of cooperation required, **and**
5. Extent of the child's involvement in the paternity or the support enforcement activity to be undertaken if the client submits only one piece of evidence or inclusive evidence, you may refer him/her to a mental health professional for a report relating to the claim.

When a claim is based on his/her undocumented statement that the child was conceived as a result of incest or sexual assault, you may review it as one based on emotional harm.

The ESA must conduct an investigation when a claim is based on anticipated physical harm and no evidence is submitted.

The client has 20 days, from the date the claim is signed, to submit evidence. The ES or social services staff may, with supervisory approval, determine that more time is needed.

There must be at least one document of evidence, in

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7.5.5 Evidence (cont.)

addition to any sworn statements from the client.

Encourage the provision of as many types of evidence as possible and offer your assistance in obtaining necessary evidence.

When insufficient evidence has been submitted:

1. Notify the client of this and specify the evidence needed, **and**
2. Advise that person on how to obtain the evidence, **and**
3. Make a reasonable effort to obtain specific documents that are not reasonably obtainable without assistance.

If the client continues to refuse to cooperate or the evidence is still insufficient, notify him/her of this. State in the notice that if no further action is taken within ten days from the notification date, good cause will not be found and that s/he may first:

1. Withdraw the claim and cooperate, **or**
2. Exclude allowable individuals, **or**
3. Request a hearing, **or**
4. Withdraw the application or request that the case be closed.

When the ten days have expired and no option above has been taken:

1. Deny MA to the applicant or remove the recipient from the MA card, **and**
2. Provide MA without regard to the client's needs, to the eligible child(ren).

The sanctions remain in effect until there is cooperation or until it is no longer an issue.

7.5.6 Investigation

The ESA must investigate all claims based on anticipated physical harm both when the claim is credible without corroborative evidence and when such evidence is not available. Good cause must be found when both the client's statement **and** the investigation satisfy you that s/he has good cause.

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7.5.6 Investigation (cont.)

You may investigate any claim when the client's statement together with any corroborative evidence does not provide a sufficient basis for a determination.

In the course of the investigation, neither the ESA nor the CSA may contact the absent parent or putative father without first notifying the client of your intention. You must also notify him/her and s/he has ten days from the notification date to:

1. Present additional supporting or corroborative evidence of information so that contact is unnecessary, **or**
2. Exclude allowable individuals, **or**
3. Withdraw the application or request that the case be closed, **or**
4. Request a hearing.

When the ten days have expired and no option has been taken:

1. Deny MA to the applicant or remove the recipient from the MA card, **and**
2. Provide MA, without regard to the client's needs, to the eligible child(ren).

The sanctions shall remain in effect until there is cooperation or until it is no longer an issue.

7.5.7 Good Cause Found

When good cause is found, the ESA must direct the CSA to not initiate any or to suspend all further case activities.

However, when the CSA's activities, without the client's participation are reasonably anticipated to **not** result in physical or emotional harm, the ESA must:

1. First notify the person of the determination and the proposed directive to the CSA to proceed without his/her participation.
2. S/he has ten days from the notification date to:

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7.5.7 Good Cause Found (cont.)

- a. Exclude allowable individuals, **or**
 - b. Request a hearing, **or**
 - c. Withdraw the application, or request that the case be closed.
3. At the end of the ten days, direct the CSA to proceed if no option was taken. The CSA may decide to not proceed based on its own assessment.

The ESA's determination to proceed without the client's participation must be in writing. Include your findings and the basis for the determination. File it in the case record.

7.5.8 Good Cause Not Found

When good cause is not found, the ESA must notify the client. Also state in the notice that s/he has ten days from the notification date to:

1. Cooperate, **or**
2. Exclude allowable individuals, **or**
3. Request a hearing, **or**
4. Withdraw the application or request that the case be closed.

When the ten days have expired and if no option has been taken:

1. Deny MA to the applicant or remove the recipient from the MA card, **and**
2. Provide MA, without regard to the applicant or recipient's needs, to the eligible child(ren).

The sanctions remain in effect until there is cooperation or until it is no longer an issue.

7.5.9 Review

The ESA does not have to review determinations based on permanent circumstances. Review those based on circumstances subject to change at review and when there is new evidence.

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7.5.9 Review (cont.)

Notify the recipient when you determine that good cause no longer exists. Also state in the notice that s/he has ten days from the notification date to:

1. Cooperate, **or**
2. Exclude allowable individuals, **or**
3. Request that the case be closed, **or**
4. Request a hearing.

When the ten days have expired and if no option has been taken:

1. Remove the recipient from the MA card, **and**
2. Provide MA, without regard to the recipient's need, to the eligible child(ren).

The sanctions remain in effect until there is cooperation or until it is no longer an issue.

7.6.0 Health Insurance

Collect health insurance information on both the custodial and absent parent using CARES. EDS also populates health insurance information to CARES. Only use the Health Insurance Information form (DES 2096) as a backup to CARES.

7.7.0 Cooperation Between ESA & CSA

The relationship between the ESA and the CSA is an ongoing cooperation.

7.7.1 Information

The ESA provides the CSA with information vital to opening medical support cases. The ESA also supplies continuing information, which assists them in providing medical support services. Therefore, the CSA may request information from the ESA in addition to that included in the referral and as contained in the case record.

CARES automatically shares client information with KIDS so it is important to enter the data accurately.

7.7.2 MA Discontinued

The CSA is notified through CARES when MA is discontinued.

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7.7.3 Failure to Cooperate

The CSA will determine if non-cooperation occurs. KIDS notifies CARES if the client refuses or fails to cooperate. You must then review eligibility.

7.7.4 Fraud

When the CSA has knowledge of possible fraud, they will refer the case back to you. For example, if in the process of collecting support the CSA establishes that a parent is in fact not absent, they will give you that information for appropriate action (IMM, Ch. II, Part D, Fraud).